

Zoning Board of Appeals Minutes 01/27/2016

MASHPEE ZONING BOARD OF APPEALS JANUARY 27, 2016 MINUTES

The Mashpee Zoning Board of Appeals held Public Hearings on Wednesday, January 27, 2016, at 6:00 p.m. in the Waquoit Room at the Mashpee Town Hall, 16 Great Neck Road North. Board Members, Jonathan Furbush, William A. Blaisdell, Scott Goldstein, Domingo DeBarros, and Associate Members, Brad Pittsley and Norman J. Gould were present. Building Commissioner, Michael Mendoza was also present. Board Member, Ron Bonvie was absent.

Jonathan Furbush announced that the meeting was televised live on Mashpee TV. The Board congratulated Scott Goldstein becoming a full board member.

CONTINUED HEARINGS

171 Uncle Percys Road: Owner, Eileen B. Ferrell, requests a Written Finding under §174-17 of the Zoning Bylaws to allow the extension of two bedrooms on the second floor, and extension of the kitchen/dining area on the first floor of a single-family dwelling on property located in an R-3 Zoning District, (Map 117 Parcel 371), Mashpee, MA. (*At the request of the Board, continued from January 13, 2016 Hearings.*)

171 Uncle Percys Road: Owner, Eileen B. Ferrell, requests a Written Finding under §174-33 of the Zoning Bylaws to determine if the extension of two bedrooms on the second floor, and extension of the kitchen/dining area on the first floor of a single-family dwelling is set back at least fifty (50) feet from any water or wetland as defined by MGL C. 131, §40, on property located in an R-3 Zoning District, (Map 117 Parcel 371), Mashpee, MA. (*At the request of the Board, continued from January 13, 2016 Hearings.*)

Jeffrey E. Ryther, P.E., from BSS Design represented the applicant for the renovation project. At the last hearing on January 13, 2016, the Board continued the application because they needed clarification from Glen Harrington, Board of Health Agent, regarding the load rated integrity of the septic system and informing the homeowner the options required by a local approving authority.

Mr. Ryther said that the Board of Health signed off on the plans and at some point when the owner sells, some minor changes will be required for full compliance of the septic system.

Mr. Furbush read comments from the Fire Department into the record; "The plans have not been marked with the placement locations for the smoke and CO detectors. The plans will need to be marked prior to Fire Department approval." This request will be addressed at time of submittal of the building permit with the Building Department.

Mr. Furbush read comments from the Board of Health into the record; "Please see the attached letter that is our response to the owner. In my opinion, the septic system is not a concern because our regulation does not give us the right to enforcement of replacing the tank right now. Tim Gray told me that he has contacted Manny from Ron's Excavation to provide one access on the flow diffusers and provide an estimate to replace the tank with an H-20 load-rated tank. The estimate will be given to the owner to see if she wishes to proceed. The BOH allows the owner to take care of the identified issues with the septic prior to the transfer of property." Mr. Furbush read the letter dated January 14, 2016 addressed to the homeowner signed by Glen Harrington, Health Agent into the record.

Mr. Ryther said after the inspection the conditions would be to upgrade the tank, or a slab poured over the tank, or change the driveway, and install a riser over one of the chambers of the leach field. This is not required until transfer of the property.

Mr. Blaisdell made a motion to approve the project with all conditions of a Written Finding under both §174-17 and §174-33 including the conditions submitted by the Board of Health, Fire Department, and Inspection Department for the renovation project. Mr. Goldstein, seconded, yes, Mr. Furbush, yes, Mr. DeBarros, yes, Mr. Gould, yes. All were in favor.

NEW HEARINGS

120 Summersea Road: Owners, James I. and Ellen B. Goodman request a Written Finding under §174-17 of the Zoning Bylaws to raze

and replace a single-family dwelling on property located in an R3 Zoning District, (Map 105 Parcel 52), Mashpee, MA.

Mr. Kieran Healy, Land Surveyor with BSC Group represented the homeowners to raze and replace the house. The plans he provided show an increase in setbacks to make the property more non-conforming than it currently exists. They are less than the required setbacks but greater than the existing conditions. The existing setback from the street is 3.6 feet, increasing that to 21.2 feet. The existing setback on the North side is 10.2 feet and proposing 10.5 feet. The South side is currently 5.8 feet to 8.4 feet, and on the rear West side increasing the setback from 29.5 to 42.8 feet. They are proposing to move the current deck out of the coastal bank area. Conservation issued an order of conditions and the plans submitted to the Board of Health were approved by Glen Harrington.

Mr. Furbush asked about the walkway going down toward the water with stairs, ramp and a float. The petition that was filed does not include a dock structure and will need a separate filing.

Mr. Goldstein asked about the measurements of the cupola on the house. Mr. Healy said the house plan shows that this cupola is 35.5 sq. ft. of uninhabitable space and strictly ornamental.

The Board had concerns with the different calculations on the site plan compared to the house plans regarding the copula. The height of the house on the site plan shows 33'-7-3/4" on the house plan, and a calculation of 29.67 ft. on the plot plan. Mr. Furbush asked that the house plans be revised and he will stamp and sign them as part of the conditions.

Mr. Paul Trane, 1 Beacon St., Boston, an abutter who owns the home at 124 Summersea Road. He has concerns regarding the current setbacks of the hot tub, the design of the second floor deck, lot coverages, and wanted to make sure his fence and landscaping are not damaged during construction. Mr. Healy said the Conservation Commission asked that the hot tub be moved back further from the coastal bank. The plot plan shows it was moved back 14 feet and can be conditioned as part of the record. Mr. Healy said the porch does not extend the length of the house, and is not wrapping around, and faces the water on the North side. The Board said he should talk with the builder and owners of the property regarding the construction as this is not in their prevue. Mr. Trane wanted to know the lot coverages. The existing lot coverage was 34.9% and proposed is 27.7% and 28.3% with the hot tub.

Mr. Furbush read the Inspection Department comments into the record; "The area is zoned R3 and is in the Pre-contact Archaeology Sensitivity area – listed as part in both the "High Sensitivity" and "Moderate Sensitivity". The applicant is seeking a Written Finding under Article V §174-17 to tear down and replace an existing home and the Board has to make the determination of this replaced home would increase the non-conforming nature.

Mr. Furbush read the comments from the Conservation Commission into the record; "There were no issues". Mr. Furbush read the comments from the Board of Health into the record; "The septic and floor plan have been reviewed and approved."

Mr. Blaisdell made a motion to approve the project with the following conditions;

- The Board has determined that the applicant meets all the conditions of a Written Finding under M.G.L. 40A Section 6.
- Plan of Land, Signed by Craig A. Field, Professional Surveyor Date: 12/22/15, #120 Summersea Road, in Mashpee, MA. Proposed Conditions, December 22, 2015, Revisions: None, Issued for Permitting, Not Construction, Prepared for: James & Ellen Goodman, 46 White Oak Lane, Sudbury, MA 01776. BSC Group, 349 Route 28, Unit D., W. Yarmouth, MA 02673, 508-778-8919. Scale: 1" = 10', File: 9959-SP-2.DWG, DWG. No. 6317-01, Job No.: 4-9959.00 Sheet 1 of 1.
- House Plans: Client: Goodman Residence, 120 Summersea Road, Mashpee, MA 02649, Scale: 1/8" = 1'0", Title: Design Development Client Approved 1st Floor Plan, Date: December 15, 2015. Michael A. Jimerson A.I.A., Architecture & Interiors, 193 Horseshoe Lane, Centerville, MA 02632, 508-775-4264. DDCA 1st, DDCA 2nd, DDCA Basement.
- The hot tub will be located no closer than 14' from the lot line.
- Conditioned that the cupola will not be habitable space and no lights to be installed.
- Conditioned on an updated house plan provided to the Building Department.

Mr. Goldstein, seconded, yes, Mr. Furbush, yes, Mr. DeBarros, yes, Mr. Pittsley, yes. All were in favor.

184 Monomoscoy Road: Owner, John Foley requests a Written Finding under §174-17 of the Zoning Bylaws requesting permission to extend a dock, pier, ramp and float across abutting property located at (0 Bay Road, Map 114 Parcel 44) in an R-3 Zoning District, (Map 114 Parcel 40A), Mashpee, MA.

184 Monomoscoy Road: Owner, John Foley requests a Special Permit under §174-25.I (9) of the Zoning Bylaws to allow for construction of a dock, pier, ramp and float extending more than 70 feet of coastal beach, coastal bank, salt marsh or bordering vegetated wetlands, on property located in an R3 Zoning District, (Map 114 Parcel 40A), Mashpee, MA.

Mr. Jeff Ryther, of BSS Design represented Mr. Foley for the request of the proposed dock project that will extend over Mr. Delory's property located at 0 Bay Road (Map 114 Parcel 44-0). He provided a plot plan showing the dimensions of a 4 ft. wide elevated walkway pier extending 113 feet, with a proposed section 10A aluminum ramp. He also provided an enlarged GIS map of Mr. Delory's marshland property along Great River and photographs of the design of the dock, ramp and float. There will be no pilings installed and will have two cross chains with bottom anchors.

Mr. Furbush asked Mr. Delory if there was a legal right-of-way going across the property and also asked what if the person sells his property or there is an argument between the two neighbors. Mr. Delory said there is no legal easement in place yet. The Board is not able to approve an easement. Mr. Goldstein said he knows that other properties have been granted easements like this in New Seabury. Mr. Furbush said that the bylaws do not allow a dock on a vacant lot because it's considered an accessory use and must have a house (principle use).

Mr. Furbush read the Conservation Comments into the record; "The commission has not reviewed this project yet. Mr. Foley would only be applying for the fixed pier portion of this project before the commission as the water body fronting his home is designated as an Area of Critical Environmental Concern by the state. What this means is that there can be no permanent structures placed below Mean High Water. Mr. Foley would need to apply for a 10-A Float license from the Mashpee Harbor Master (from what I've heard, there is currently a waiting list for 10-A floats).

If he were to get a 10-A Float from the Harbormaster and a permit from the conservation commission for a fixed pier terminating at Mean High Water, he could connect the two with an aluminum ramp.

The 10-A Float and ramp should not be shown on any plan that is submitted to the conservation commission as they have no jurisdiction over 10-A floats, hence they should not be part of any proposal to the commission. It was noted that 10-A floats arebottom anchored only and cannot, under any circumstances, be supported by piles (wood, metal or other). Additionally, these floats must be removed from the water seasonally and they cannot be dragged over any wetland resource areas for the purposes of upland storage. Any upland storage of the float must be described via written notification to the commission as to the area of storage and methodology of removal/placement.

Mr. Furbush read the comments from the Acting Harbormaster into the record; "In regards to the 184 Monomoscoy Rd request for a ramp and/or pier across marshland, the acting harbormaster (Richard Santangelo) is not approving any 10A floats in an ACEC area. He is going to let the new harbormaster make those decisions when he/she is hired. I looked at a map and it does not appear that the proposed pier across the marsh would be a hazard to navigation. Thank you, Lt. John Santangelo

Mr. Furbush read the comments from the Inspection Department into the record; "The area is zoned R3 and is in the Pre-contact Archaeology Sensitivity area – listed as "High Sensitivity". The applicant is seeking a Written Finding under Article V §174-17 regarding a determination from the Board if the construction of a structure (a boat ramp) across the abutting property lot, which does not have a principal structure, would be considered a permitted Use. Currently, the Zoning By-Laws, for the Town of Mashpee, does not address this sort of Use, thus, this department does not support such situations within the Town of Mashpee. The area is zoned R3 and is in the Pre-contact Archaeology Sensitivity area – listed as "High Sensitivity". The applicant is seeking a Special Permit under §174-25 I (9) regarding the construction of a dock, pier, ramp and float extending more than 70 feet of coastal beach, coastal bank, salt marsh or bordering vegetated wetlands."

Mr. Furbush read Mr. Delory's notarized letter dated January 4, 2016 into the record giving BSS Design permission to transverse his marsh for a dock easement.

Mr. Furbush also read a letter dated December 10, 2015 addressed to Mr. Andrew McManus, from Jeffrey Ryther, of BSS Design into the record.

Mr. Ryther provided the Board a document titled "Waquoit Bay ACEC Boundary Description" and summarized that the initials "MLW" stand for Mean Low Water. He mentioned that Drew commented "Mean High Water" and he believes is a typo.

Mr. Furbush asked Mr. Ryther to put together an "action plan" and that he would review it with Town Counsel. He also wanted to hear from Conservation and the new Harbormaster when she/he is hired.

To make their determination, the Board wants to see the legal documented easement, a notice of intent approved by Conservation Commission, and an approval from the new Harbormaster.

Mr. Furbush said that the Board has 90 days to act on the petitions or they will be automatically granted. Mr. Furbush also requested that Mr. Ryther email Mary Ann his action plan as soon as possible so that he could review it with Town Counsel. Mr. Ryther agreed to continue the hearing until the April 13, 2016 hearing and will provide an “action plan” for the Board to make their determination. The Board also told Mr. Ryther that if he decides to withdraw, he will need to provide the Board with a formal written letter either before or at the April 13, 2016 hearings.

Mr. Blaisdell made a motion to continue the petitions of the dock project until April 13, 2016. Mr. Goldstein, seconded. Mr. Furbush, yes, Mr. DeBarros, yes, Mr. Pittsley, yes, and Mr. Gould, yes, and Mr. Goldstein, yes. All were in favor to continue the proposed dock project until April 13, 2016.

Mr. Gould made a motion to approve the January 13, 2016 meeting minutes, yes, Mr. Blaisdell seconded, yes, Mr. Furbush, yes, Mr. DeBarros, yes, Mr. Pittsley, yes. All were in favor.

Mr. DeBarros made a motion to adjourn. Mr. Goldstein seconded, yes, Mr. Furbush, yes, Mr. Blaisdell, yes, Mr. Pittsley, yes, and Mr. Gould yes. All were in favor.

Respectfully submitted,

Mary Ann Romero
Administrative Secretary
Zoning Board of Appeals